

JS 44 (Rev. 12/07, NJ 5/08)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

DEBRA ESTER-HEINDEL

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Craig Thor Kimmel, Esquire  
Kimmel & Silverman, P.C.  
30 E. Butler Pike  
Ambler, PA 19002  
(215) 540-8888

**DEFENDANTS**

MCGUIGAN LAW OFFICE, LLC and MICHAEL MCGUIGAN,  
Individually and On Behalf of McGuigan Law Office, LLC **+**

County of Residence of First Listed Defendant \_\_\_\_\_

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known) \_\_\_\_\_

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C SECTION 1692

Brief description of cause:

Fair Debt Collection Practices Act

**VII. REQUESTED IN COMPLAINT:**
☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S)**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

Explanation: \_\_\_\_\_

DATE

SIGNATURE OF ATTORNEY OF RECORD

04/24/2013

## UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 12401 Orange Grove Dr., Apt. 902, Tampa, FL 33618

Address of Defendant: 311 Veterans Highway, Suite 100A, Levittown, PA 19156

Place of Accident, Incident or Transaction: \_\_\_\_\_  
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases  
(Please specify) 15 U.S.C. § 1692

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases  
(Please specify) \_\_\_\_\_

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Craig Thor Kimmel, counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: 04/24/2013

Attorney-at-Law

57100

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 04/24/2013

Attorney-at-Law

57100

Attorney I.D.#

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

DEBRA ESTER-HEINDEL

CIVIL ACTION

v.

NO.

MCGUIGAN LAW OFFICE, LLC and  
MICHAEL MCGUIGAN, Individually and On  
Behalf of McGuigan Law Office, LLC

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. (X)
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ( )

04/24/2013  
Date

Craig Thor Kimmel  
Attorney-at-law

Plaintiff, Debra Ester-Heindel  
Attorney for

215-540-8888  
Telephone

877-788-2864  
FAX Number

kimmel@creditlaw.com  
E-Mail Address

1                                   **UNITED STATES DISTRICT COURT**  
2                                   **FOR THE**  
3                                   **EASTERN DISTRICT OF PENNSYLVANIA**

4 DEBRA ESTER-HEINDEL,                                   )

5                                   Plaintiff                                   )

6                                   v.                                   )

7                                   MCGUIGAN LAW OFFICE, LLC,                                   )

8                                   and                                   )

9                                   MICHAEL MCGUIGAN, Individually )

10                                   and On Behalf of McGuigan Law )

11                                   Office, LLC,                                   )

12                                   Defendants                                   )

Case No.:

COMPLAINT AND DEMAND FOR  
JURY TRIAL

(Unlawful Debt Collection Practices)

13  
14  
15                                   **COMPLAINT**

16                   DEBRA ESTER-HEINDEL (“Plaintiff”), by and through her attorneys,  
17  
18 KIMMEL & SILVERMAN, P.C., alleges the following against MCGUIGAN  
19 LAW OFFICE, LLC and MICHAEL MCGUIGAN, Individually and On Behalf of  
20 McGuigan Law Office, LLC (“Defendants”):

21                                   **INTRODUCTION**

22                   1.     Plaintiff’s Complaint is based on the Fair Debt Collection Practices  
23 Act, 15 U.S.C. §1692 *et seq.* (“FDCPA”).  
24  
25



## JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. §1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” and 28 U.S.C. §1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

3. Defendants are located in the Commonwealth of Pennsylvania; as such, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. §1391(b)(1).

## PARTIES

5. Plaintiff is a natural person residing in Tampa, Florida 33618.

6. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §1692a(3).

7. In the alternative, Plaintiff is a person granted a cause of action under the FDCPA. See 15 U.S.C. § 1692k(a) and Wenrich v. Cole, 2000 U.S. Dist. LEXIS 18687 (E.D. Pa. Dec. 22, 2000).

8. Defendant McGuigan Law Office (“MLO”) is a debt collection law firm with its offices located at 311 Veterans Highway, Suite 100A, Levittown, PA 19156.

9. Defendant Michael McGuigan (“MM”) is the principle of Defendant

1 MLO and at all relevant times controlled the conduct of Defendant MLO. MM  
2 has a business office located at 311 Veterans Highway, Suite 100A, Levittown,  
3 PA 19156.  
4

5 10. Defendants acted through their agents, employees, officers, members,  
6 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,  
7 representatives, and insurers.  
8

### 9 **FACTUAL ALLEGATIONS**

10 11. At all relevant times, Defendants were attempting to collect an alleged  
11 consumer debt.  
12

13 12. Upon information and belief, the alleged debt at issue arose out of  
14 transactions, which were primarily for personal, family, or household purposes.  
15

16 13. Throughout August 2012, Defendants contacted Plaintiff in an attempt  
17 to collect a debt.  
18

19 14. During the relevant period, the parties had multiple conversations  
20 regarding the underlying debt.  
21

22 15. During those conversations, Defendants were demeaning, rude and  
23 deceptive, and on at least one occasion, threatened to secure a judgment against  
24 Plaintiff if she did not pay the alleged debt.  
25

16. None of the Defendants have employees licensed to practice law in  
the State of Florida.

1 17. None of the Defendants file collection lawsuits in the State of Florida.

2 18. None of the Defendants have filed suit against Plaintiff for the alleged  
3 debt.  
4

5 19. Upon information and belief, none of the Defendants intended to file a  
6 lawsuit against Plaintiff for the alleged debt.

7 20. Upon information and belief, Defendants at no time had authority to  
8 file a lawsuit against Plaintiff for the alleged debt.  
9

10 21. As a result of the above, Defendants' threat to file suit was false,  
11 deceptive and misleading.

12 22. In another conversation, Defendants threatened to seize Plaintiff's  
13 401k retirement plan to satisfy the debt but cannot and have not done so.  
14

15 23. Upon information and belief, Defendants had no intention to access or  
16 seize funds from Plaintiff's 401k retirement plan to satisfy the alleged debt.  
17

18 24. Upon information and belief, Defendants had no authority to seize  
19 Plaintiff's 401k retirement plan to satisfy the alleged debt.

20 25. In light of the above, Defendants' threat to seize the retirement  
21 account was at all times false, deceptive and misleading.  
22

23 26. Finally, on at least one occasion, Defendants threatened to "file a  
24 judgment" against Plaintiff "within 24 hours" if she did not pay the outstanding  
25 debt.

1       27. No Defendant possessed the ability, authorization or legal entitlement  
2 to carry out the stated threat and in fact, Defendants do not file civil lawsuits  
3 against residents of the State of Florida.  
4

5       28. To date, Defendants have not filed suit against Plaintiff for the alleged  
6 debt.  
7

8       29. Upon information and belief, Defendants did not have any intention of  
9 filing a lawsuit against Plaintiff for the alleged debt.  
10

11       30. At the time that it made that threat, Defendants' threat to sue within  
12 24 hours was false, deceptive and misleading.  
13

14       31. Further, upon information and belief, Defendants could not obtain a  
15 judgment within 24 hours.  
16

17       32. In addition, in its attempts to collect the debt, Defendants contacted  
18 Plaintiff's father, though Defendants already possessed valid contact information  
19 for Plaintiff and had no legitimate business purpose for contacting Plaintiff's  
20 father.  
21

22       33. Defendants' purpose in contacting Plaintiff's father was to embarrass,  
23 annoy, abuse, and harass, believing that by contacting the father, a payment would  
24 be made.  
25



**DEFENDANTS VIOLATED THE  
FAIR DEBT COLLECTION PRACTICES ACT**

**COUNT I**

34. Defendants' conduct, as detailed in the preceding paragraphs, violated 15 U.S.C. §1692d.

a. A debt collector violates §1692d of the FDCPA by engaging in conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.

b. Here, Defendant violated §1692d of the FDCPA by calling Plaintiff's father, despite possessing her valid contact information, with the intent of harassing Plaintiff into paying the alleged debt.

**COUNT II**

35. Defendants' conduct, as detailed in the preceding paragraphs, violated 15 U.S.C. §§1692e, 1692e(2)(A), 1692e(5) and 1692e(8) of the FDCPA.

a. A debt collector violates §1692e of the FDCPA by using false, deceptive or misleading representations or means in connection with the collection of any debt.

b. A debt collector violates §1692e(2)(A) of the FDCPA by falsely representing the character, amount or legal status of any debt.

c. A debt collector violates §1692e(5) of the FDCPA by threatening to take any action that cannot legally be taken or that is not

1 intended to be taken.

2 d. Here, Defendants violated §§1692e, 1692e(2)(A), and 1692e(5) of  
3 the FDCPA by telling Plaintiff that they were going to get a  
4 judgment against her and threatening to take her 401k if she failed  
5 to pay the debt even though Defendants did not intend and legally  
6 take such action at the time that they made those threats.  
7

8 WHEREFORE, Plaintiff, DEBRA ESTER-HEINDEL, respectfully prays for  
9 a judgment as follows:  
10

- 11 a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);  
12 b. Statutory damages of \$1,000.00 for the violation of the FDCPA  
13 pursuant to 15 U.S.C. § 1692k(a)(2)(A);  
14 c. All reasonable attorneys' fees, witness fees, court costs and other  
15 litigation costs incurred by Plaintiff pursuant to 15 U.S.C.  
16 §1693k(a)(3); and  
17 d. Any other relief deemed appropriate by this Honorable Court.  
18

19 **DEMAND FOR JURY TRIAL**

20 PLEASE TAKE NOTICE that Plaintiff, DEBRA ESTER-HEINDEL,  
21 demands a jury trial in this case.  
22  
23  
24  
25

RESPECTFULLY SUBMITTED,

Date: 04/24/13

By: 

CRAIG THOR KIMMEL

Attorney ID No. 57100

Kimmel & Silverman, P.C.

30 E. Butler Pike

Ambler, PA 19002

Phone: (215) 540-8888

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Email: [kimmel@creditlaw.com](mailto:kimmel@creditlaw.com)